



DOCKET NO.: 03122

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

## IN RE APPLICATION OF:

BODARY et al. : GROUP ART UNIT: 3727

SERIAL NO.: 10/652,038 :

FILED: September 2, 2003 : EXAMINER: T. M. MAI

FOR: FOOD SCOOP AND SERVING CONTAINER

DECLARATION PURSUANT TO 37 C.F.R.1.132

1. The Declarant, Michael G. Bodary, states that he is a co-inventor of the invention disclosed in U.S. patent application Serial No. 10/652,038.

2. Declarant further states that the results of tests results support Applicant's claim (see the paragraph bridging pages 3 and 4 of the specification) that the circumferential grain direction of a finished food scoop and serving container (hereinafter "container") according to the invention have unexpected advantages in that:

- The finished container has an increased stiffness as compared to a container of greater thickness and having a grain direction in the direction of from the top to the bottom of the container;
- The layout of the carton elements reduces scrap area and results in a significant paper savings.

3. The Declarant further states that the claimed cross grain design and layout saves paperboard in at least two ways:

- The resultant layout reduces "pattern scrap" by 22.4% for current and new design detailing square inches per unit (see press layouts shown in Attachments 1 and 2 hereto).
- The design also saves paper by allowing a lower caliper board to be used and still maintain adequate stiffness in the formed container. This is possible because

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paperboard typically has twice the stiffness in the grain direction than it does in the opposite direction. Cups are traditionally made with the grain direction vertical because a rim cannot be curled in any other orientation. In contrast, the claimed container does not have a rim, and so it was possible to form the container "cross grain" and take advantage of the board's higher stiffness. In this regard, see Attachment 3 for test results detailing sidewall stiffness at a variety of calipers in both MD (Machine Grain Direction) and CD (Cross Grain Direction) orientation. The original carton was produced using 15 pt stock in the MD orientation, although it is recommended to use 12 or 13 pt stock with CD orientation due to its availability.

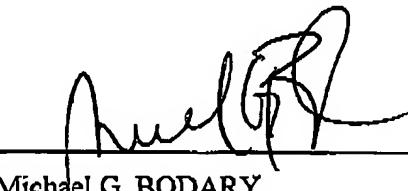
4. The Declarant further states that the total paper savings for this design versus the previous traditional design is 35%. Paper represents the largest portion of the total cost for this item, so significant cost savings can be enjoyed. The reduced paper usage is also a significant improvement in the overall environmental impact of this item.

5. The Declarant further states that the commercial success of the claimed container is evidenced by the fact that the container of the invention is now used by all Wendy's Restaurants of Canada.

6. Further the Declarant saith not.

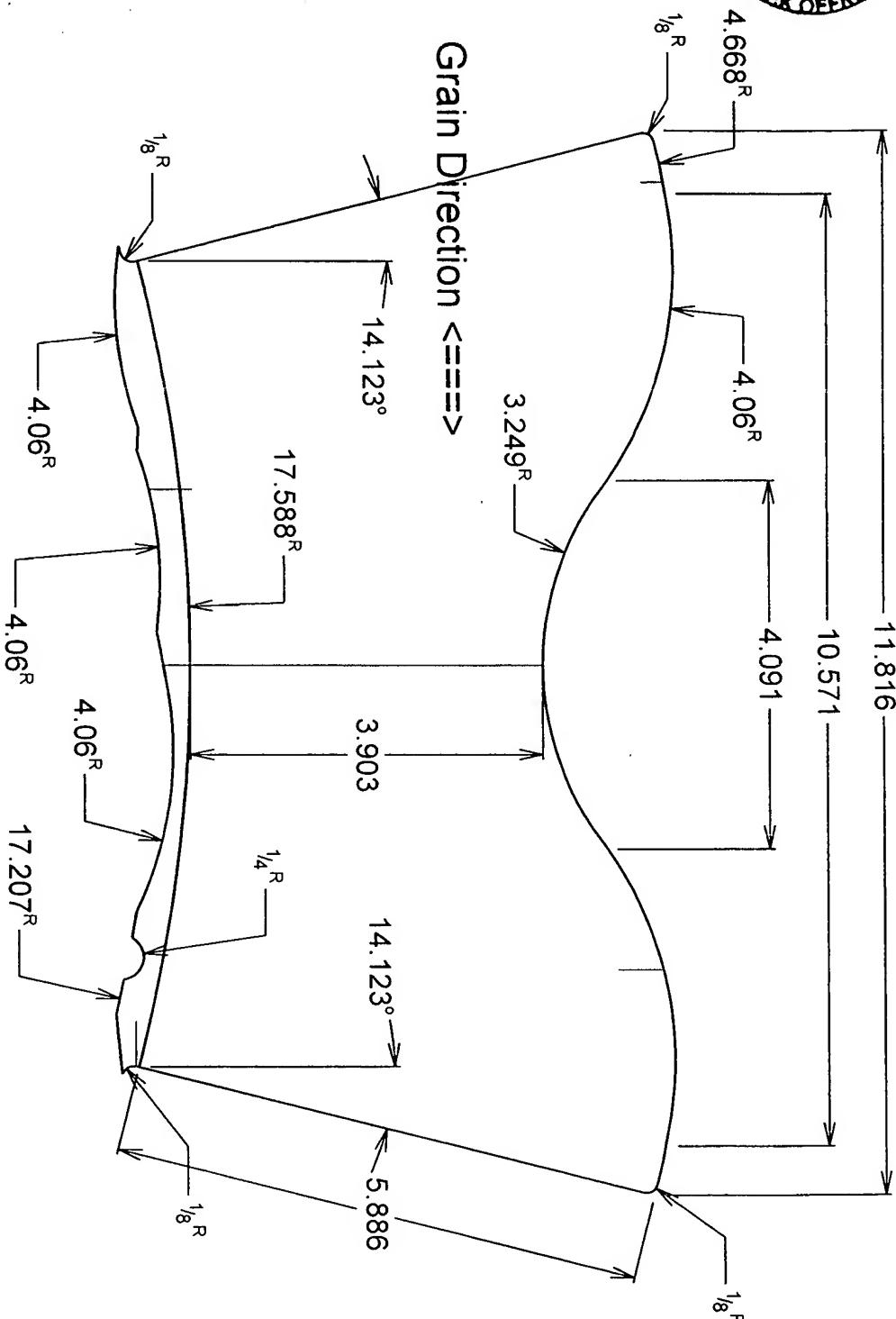
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 8/9/05

  
Michael G. BODARY

U.S. PATENT & TRADEMARK OFFICE  
AUG 09 2005  
OPIPE - JC104

ATTACH. 1



Fry cup Top OD 3.722, Front Height 3.890, Back Height 5.868, Angle 4.5 degree, Seam Width 0.321, Bottom Depth .385, Bottom Punch DIA 3.45, Feedup 3.558, Web Width 3.563  
Wendy's Great Biggie Fry Cup has 5/64" Bleed into Lap Seam for full cover print.  
Cross Grain blank design, Printed Side Shown.  
Production Structure with Seam increased from .290" to .321".

Customer(s): Wendy's

Item: Great Biggie

Design #: WDF05E

Style of Carton: Conference Fry Cup

New Structure

CAD

Size: Use 32 oz Cold Cup Tooling	Area: 54.926	Printed Side Shown
Material: .0125 Wall Bottom	Dopaco Inc.	
Date: 11/22/2002	Design Department	

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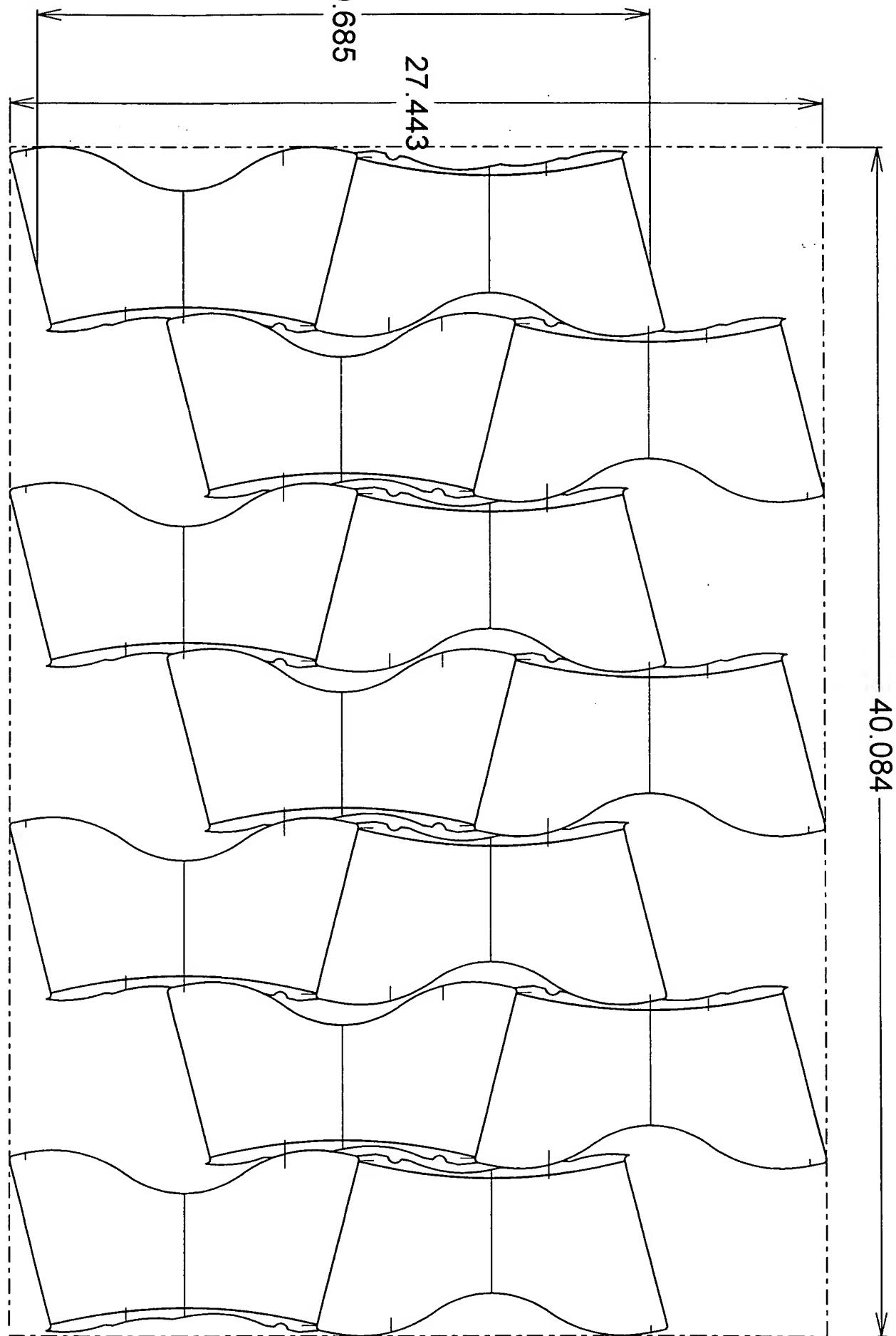
WENDY'S CANADA GREAT BIGGIE

STR# WDF05E(LGSTC)  
CONFERENCE FRY CUP

AREA: 54.9263  
1/22/02

59.24 SQ INCHES

PER UNIT.

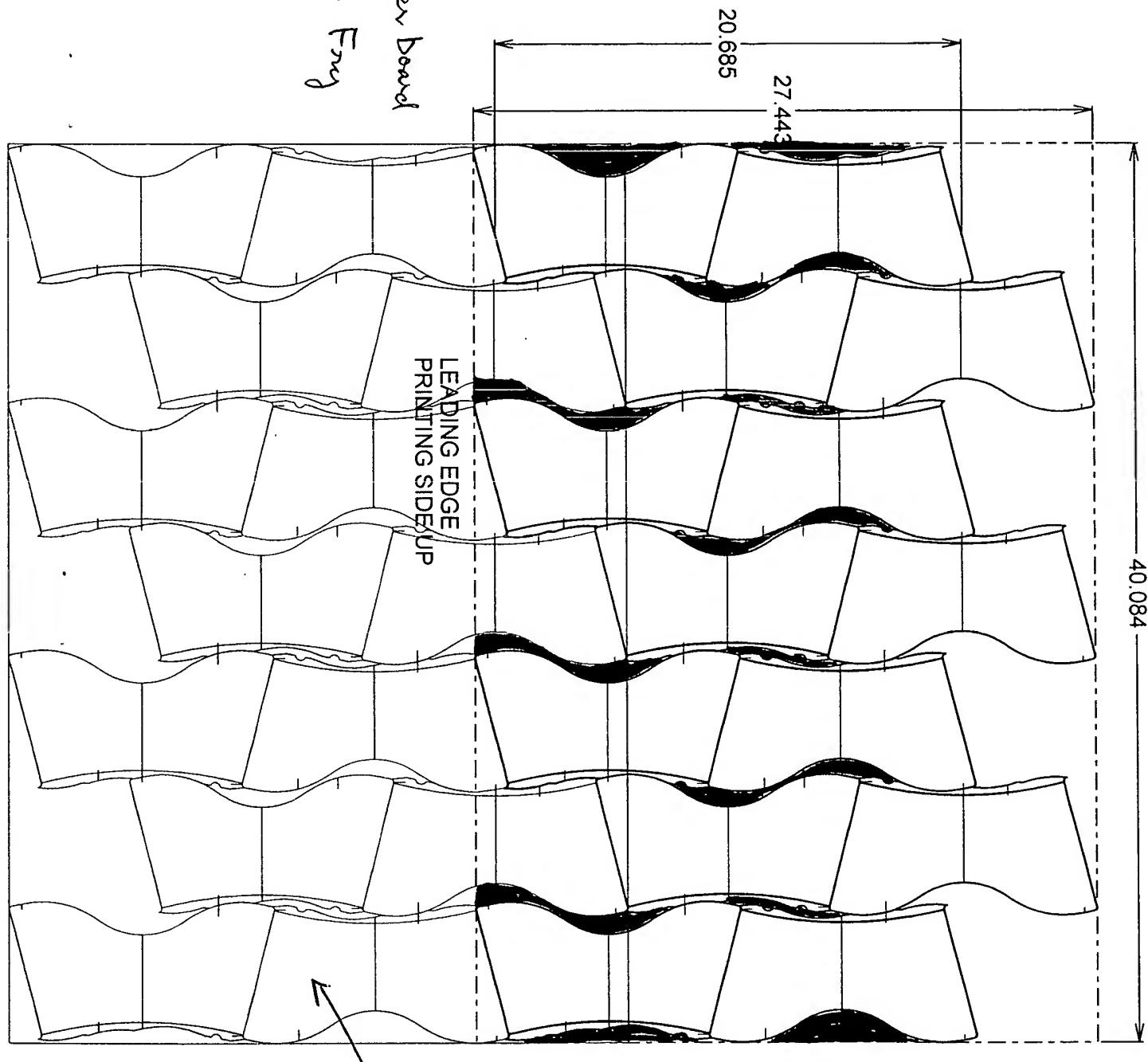


LEADING EDGE  
PRINTING SIDE UP

GRAIN DIRECTION

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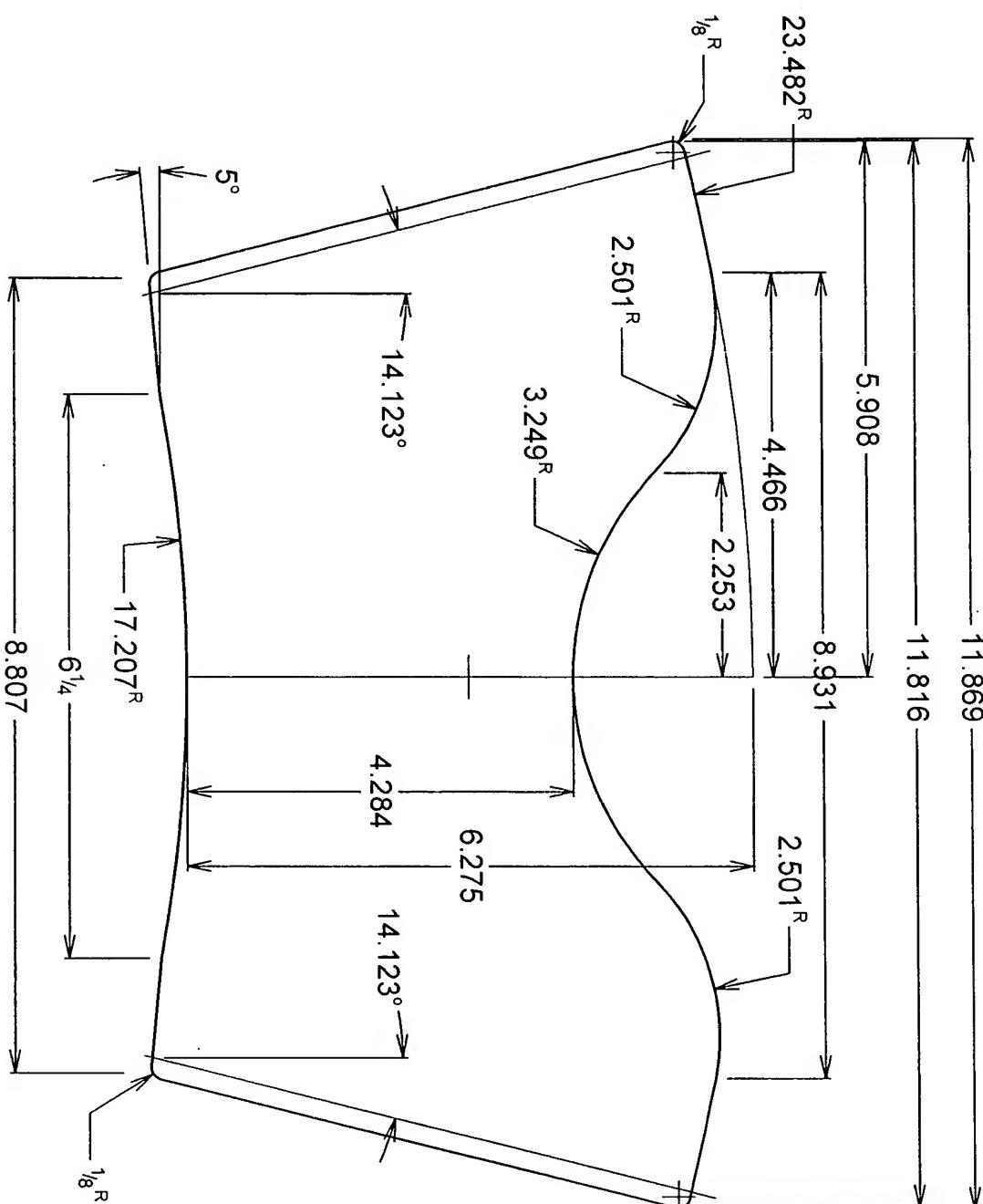
וְיַעֲשֵׂה יְהוָה כָּלֵב  
STR# WDF05E(LGSTC)  
CONFERENCE FRY CUP  
AREA: 54.9263  
11/22/02



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Attnch. 2



Grain Direction <====>

Fry cup Top OD 3.691, Cup Height 5.876, Angle 4.5 degree, Seam Width 3.81,  
 Bottom Depth .395, Punch DIA 3.478, Feedup 3.561, Web Width 3.622  
 Wendy's Great Biggie Fry Cup, Structure from Conference Cup  
 Printed Side Shown

Original Structure

Customer(s): Wendy's

Item: Great Biggie

Size: Use 32 oz Cold Cup Tooling

Area: 56.476

Printed Side Shown

Design #: WDF01

Material: .015 Wall

Dopaco Inc.

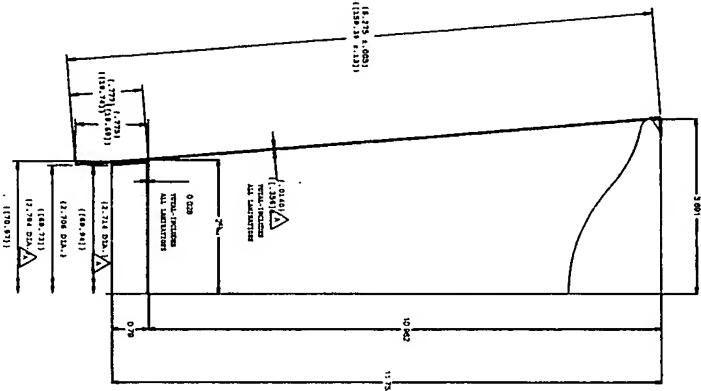
Style of Carton: Conference Fry Cup

Date: 10/21/2002

Design Department

CAD

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Set #2 Mar 15th

Cup Rigidity Tester used to measure force to deflect BK King Carton 1/4" travel of compression.  
Compression on side panels, centered, roughly 2/3 up from bottom of carton ( 5 5/8" )

Liming made ctn's.  
Flush cut tops (not exact BK ctns)



Gauge	Grade	Compression Ctn grain	Side	panels	CD Orient
			MD Orient		
012	S'cycle	0.166	0.354		
	SBS	0.164	0.294		
014	S'cycle	0.198	0.524		
	SBS	0.216	0.392		
015	Kraftpak	0.188	0.424		
	S'cycle	0.21	0.506		
016	SBS	0.302	0.526		
	Kraftpak	0.25	0.566		
017	S'cycle	0.336	0.938		
	SBS	0.452	0.878		
018	S'cycle	0.516	1.194		
	SBS	0.648	1.118		
020	S'cycle	0.532	1.57		
	SBS c/2/s	1.226	1.8		
022	S'cycle				
023	SBS				

Tested at D'tn plant, 15 March 2001 by G. Casper

Attachment

3.